IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2006

CORAM

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No.39384 of 2006
and
M.P.No.1 of 2006

C.Regraj ..Petitioner.

-Vs-

Bank of Rajasthan,
Rep. by its Chief Manager,
89, R.K.V.Road,
Erode - 638 003. ..Respondent

Petition filed under Article 226 of the Constitution of India for issue of Writ of Certiorari to call for the records of the respondent in his proceedings No.Nil dated 30.08.2006 and quash the same.

For Petitioner : Mr.G.Ilamurugu
For Respondents : Mr.S.Rajasekar, Govt. Advocate

O R D E R

This writ petition is filed challenging the possession notice issued by the respondent Bank against the petitioner dated 30.8.2006 by virtue of the powers conferred under Section 13(2) of the Securitisation and Reconstruction of Financial Assets Enforcements and Security Enforcement Act,2002.

2. The case of the petitioner is that on earlier occasion, this Court in W.P.M.P.No.13904/2006 dated 10.5.2006 has directed the petitioner to deposit Rs.50 lakhs. However, it appears that the petitioner has deposited only Rs.20 lakhs and he has filed an application for the purpose of extension of time for payment of the balance amount of Rs.30 lakhs. By subsequent order dated 31.5.2006, this Court has permitted the petitioner to pay the said balance amount of Rs.30 lakhs within four weeks time.

3. It is the case of the petitioner that before the expiry of four weeks time given by this Court, an order under section 13(4) of the said Act came to be passed, taking possession. On a perusal of

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the order passed by this Court, it shows that inspite of the order passed on 10.5.2006 directing the petitioner to deposit Rs.50 lakhs, the petitioner has deposited only Rs.20 lakhs and subsequently, an order dated 31.5.2006 came to be passed, in which the petitioner was directed to pay the remaining amount within four weeks time and the said four weeks time expired during the end of June, 2006. It was only after the expiry of four weeks, again on 17.7.2006, the respondent has given notice under section 13 (2) of the Securitisation Act, directing the petitioner to pay the amount. Inspite of that, the petitioner has not paid the amount. In view of the same, provision under section 13(4) of the Securitisation Act was invoked by the respondent Bank for the purpose of taking possession. Therefore, there is absolutely no justification in the contention of the learned counsel for the petitioner that even before four weeks time granted by this Court, the respondent has invoked the jurisdiction under section 13(4) of the Securitisation Act. Hence, the possession notice taken under section 13(4) of the Securitisation Act is perfectly in order.

4. As against the order passed under section 13(4) of the Securitisation Act, section 17 provides an appeal to be filed before the Debt Recovery Tribunal within a period of 45 days, from the date on which the measures have been taken. Therefore, on the face of it, when there is an effective alternative remedy which is available under the statutory provision, a writ petition cannot be filed invoking Article 226 of the Constitution of India. In view of the same, the writ petition fails and the same is dismissied giving liberty to the petitioner to approach the appropriate authority namely The Debt Recovery Tribunal as per Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcements and Security Interest Act, 2002.

5. At this juncture, learned counsel for the petitioner would submit that the order under section 13(4) was passed on 30.8.2006 and within a period of 45 days from that date, an appeal should be filed under section 17(1) of the said Act and by this time, there is a delay of two days.

6. On reference to the papers in the writ petition, it is seen that the writ petition has been filed on 11.10.2006 which is within 45 days from the date of the order passed under section 13(4) of the Securitisation Act. In view of the same, the petitioner is permitted to file an appeal as per Section 17(1) of the Securitisation Act within a period of ten days from today and on the petitioner filing such an appeal within the time stipulated, the Debt Recovery Tribunal shall receive the same and pass orders in accordance with section 17 (1) of the Securitisation Act.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. The writ petition is dismissed with the above directions. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vsi

To

The Chief Manager,
Bank of Rajasthan,
89, R.K.V.Road,Erode - 638 003.

+1cc to Mr.G.Ilamurugu, Advocate Sr 48880

AKM (CO)
km/18.10.

W.P.No.39384 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/